IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

CRP.No. 3000 of 2000(A)

TLB.1617/1973 OF TALUK LAND BOARD, HOSDRUG DTD. 01/06/1999.

REVISION PETITIONER:

STATE OF KERALA.

BY GOVERNMENT PLEADER SMT. R. BINDU.

RESPONDENTS:

1. KUNNEL PAILY VARKEY,
S/O. PAILY BHEEMANADY,
WEST ELERI VILLAGE,
P.O. PLACHIKKARA.

<u>*ADDL. RESPONDENTS 2 TO 16 IMPLEADED:</u>

***2. MARIYAM, KUNNEL VEEDU, PALAVAYAL, HOSDURG, KASARAGOD DT.**

***3. CHINNAMMA, KUNNEL VEEDU PALAVAYAL, HOSDURG TALUK, KSARAGOD DT.**

***4. ACHAMMA, KUNNEL VEEDU, PALAVAYAL, HOSDURG TALUK, KASARAGOD DT.**

***5. GEORGE, KUNNEL VEEDU, PALAVAYAL, HOSDURG TALUK, KASARAGOD DT.**

C.R.P. NO. 3000/2000:

***6. AELI THOMAS, THALACHIRA VEEDU, VELLATHERAL, CHITHIRAPURAM, IDUKKI.**

***7. K.V. MATHEW, KUNNEL VEEDU, PLACHIKKARA, NARAMACHERI, KASARAGOD DT.**

***8. ANNAMMA, KUNNEL VEEDU, BHEEMANADI.P.O., KASARAGOD.**

***9. SAJI, KUNNEL VEEDU, BHEEMANADI.P.O., KASARAGOD - 671 314.**

***10. SANTHI, -DO- " "**

***11. SANTHOSH -DO- " "**

***12. SALI -DO- " "**

***13. PONNAMMA JOSEPH, MARUNGAN VEEDU, CHITTARIKKAL.P.O., CHITTARIKKAL, KASARAGOD.**

***14. MARY JOSEPH, KANNIKKAT VEEDU, KANNIVAYAL, KANNIVAYAL.P.O., KASARAGOD DT.**

***15. K.V. JOSEPH, KUNNEL VEEDU, THERTHALLI.P.O., ALAKODY, KANNUR DT.**

***16. THRESYAMMA JOSEPH, MATTAMUNDAYIL VEEDU, NATTAKKALLU.P.O., MELOM, KASARAGOD.**

***ADDL. RESPONDENTS 2 TO 16 ARE IMPLEADED AS PER ORDER DATED 21/11/2007 IN I.A. NO. 1664/2006.**

BY ADV. SRI.JAWAHAR JOSE,
ADV. SMT.CISSY MATHEWS.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/11/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.3000 OF 2000

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Dated this the 21st day of November 2007

ORDER

This revision petition is preferred against the order of the Taluk Land Board, Hosdurg in TLB No.1617/73. The Taluk Land Board has re-opened the case of Sri.Kunnel Paily Varkey on the ground that an extent of 8 acres of land in R.S.No.91/pt of West Eleri Village has been excluded from the account of the statement given by Sri.Paily Varkey. The Taluk Land Board deputed its Spl.Deputy Tahsildar and he has reported that Paily Varkey had taken lease of the said land from one Padmini Amma and he had released his kuzhikanam right to Sri.K.V.Mathew and in the very same year and ever since the property measuring 8 acres is in the absolute possession and enjoyment of Sri.K.V.Mathew. The Taluk Land Board also found that as per the proceedings in O.A.No.1362/72, the Land Tribunal, Nileshwaram had issued a certificate of purchase in favour of Sri.K.V.Mathew and it further held that Sri.K.V.Mathew is a genuine tenant and therefore there is no surplus land to be surrendered in this case.

2. Aggrieved by the said order, the Government have come up in revision. A perusal of the revision memorandum would reveal that the

principal contention raised by the Government is to the effect that while enquiry was conducted in the Land Tribunal proceedings, a Revenue Inspector has inspected the property and he has held that approximately 10 years prior to his visit the tenancy was created. It is submitted in the revision memorandum that since the visit was in the year 1975 and 10 years prior to it will be 1965 and as it is against the provision of Section 74 of the Kerala Land Reforms Act, which prohibits creation of tenancy after 1.4.1964, the Tribunal's order is liable to be ignored. It has to be born in mind it is not on the basis of the Revenue Inspector's report that the Land Tribunal had issued certificate of purchase. The Spl.Deputy Tahsildar, who inspected the property at the instance of the Taluk Land Board, who had reopened the case under Section 85(9) of the KLR Act has reported that the lease in favour of Paily was of the year 1960 by Padmini Amma and there had been a lease by Paily in vafour of Mathew in the very same year and from that date onwards, Mathew is in possession and enjoyment of the property.

3. Therefore, on a consideration of all these materials, the Land Board held that certificate of purchase is valid and therefore excluded that land for computing the ceiling area of Mr.Paily. It is true that the Land Board has got the power to decide the question of tenancy in a land ceiling proceedings.

But, equally it is settled that a certificate of purchase issued by the Land Tribunal under Section 72(k) of the K.L.R.Act is a conclusive proof of tenancy(1979 KLT 601). Until and unless there are some materials to show that it is otherwise, one cannot simply ignore the issue of a certificate of purchase. Similarly a report of the authorised officer under Section 105 of the K.L.R.Act is also valid and acceptable and it forms part of the proceedings of the Taluk Land Board. It also fully supports the contention of the declarant. A mere suspicion that had arisen in the mind of the authorities is no ground to set aside an order which has been passed after consideration of all the materials.

Therefore C.R.P. lacks merit and it is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-